

REMARKS

Claims 1-47 and 51-55 are pending in the present application. Claims 9-12 and 20-24 have been withdrawn from consideration due to the restriction requirement. Claims 48-50 and 56-71 have been cancelled without disclaimer of or prejudice to the subject matter contained therein. These claims have been cancelled due to the restriction requirement. Applicants expressly reserve the right to file continuing applications directed to the subject matter of these cancelled claims. Reconsideration and withdrawal of the rejections are respectfully requested in view of the following remarks.

The Double Patenting Rejection

Claims 1-8, 13-19, 45-47, 51-53, and 55 remain rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17, 19-45, 52-61, and 93-113 of co-pending Application No. 10/523,117. Applicants note that this rejection should properly be a provisional one, as the co-pending application has not yet been deemed in condition for allowance. Applicants will address the rejection at such time as the claims of Application No. 10/523,117 are deemed allowable and the rejection of the present application becomes non-provisional.

The Rejection under 35 U.S.C. §102(b) Should be Withdrawn

Claims 1-8, 13-19, 45-47, and 51-55 remain rejected under 35 U.S.C. §102(b) as being anticipated by PCT Publication No. WO 2001/009350 (Berthet *et al.*). Applicants respectfully traverse this rejection on the grounds outlined below.

Claim 1 of the present application is directed to an immunogenic composition comprising an isolated Tbp protein or antigenic fragment thereof and an isolated Hsf-like protein or antigenic fragment thereof. The Berthet *et al.* reference does not explicitly disclose an immunogenic composition containing this particular pair of antigens. Berthet *et al.* teach a bleb preparation having one or more upregulated genes selected from a list of 21 antigens, including Hsf-like and TbpA and Tbp. Thus, the reference teaches a genus of many possible antigen combinations, including 210 distinct combinations of two different antigens but does not list the particular combination of an Hsf-like antigen and a TbpA or TbpB antigen.

According to the relevant case law, lists and genera should be treated differently when determining whether a reference is anticipatory. For example, in *Atofina v. Great Lakes Chem Corp.*, the Federal Circuit stated, “[i]t is well established that the disclosure of a genus in the prior art is not necessarily a disclosure of every species that is a member of that genus.” *Atofina v. Great Lakes Chem Corp.* 441 F.3d 991, 992 (Fed. Cir. 2006). Accordingly, because the Berthet *et al.* reference teaches a large genus of possible antigen combinations but does not list the specific combination recited in claim 1, this reference does anticipate the subject matter of claim 1 or dependent claims 2-8, 13-19, 45-47, and 51-55.

In view of the above arguments, all grounds for rejection under 35 U.S.C. §102(b) have been overcome. Reconsideration and withdrawal of the rejection are respectfully requested.

CONCLUSION

Applicants believe the present claims are in condition for allowance and such action is respectfully requested. Applicants believe that no other fees are due in connection with the filing of this paper other than those specifically authorized herewith.

Should any other fees be deemed necessary to effect the timely filing of this paper, the Commissioner is hereby authorized to charge such fees to Deposit Account No. 07-1392. If the Examiner has any outstanding issues with the pending claims, she is encouraged to telephone the undersigned at (919) 483-1467 for expeditious handling.

Respectfully submitted,

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